THE RIGHTS AND DUTIES OF NEUTRALIZED TERRITORY.

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Although the growing importance of the United States and their extended influence as a world power have made the subject one of prime interest to them in many respects heretofore, there has probably never been a time when the principle of neutrality has had for us in America the same weighty consideration that it has under the existing circumstances in the world today.

Never, probably, have the rights and duties of neutrals been so carefully scrutinized by American public opinion, or so sensitively tested by the responsible authorities of our Government. And very justly so, because, with almost the whole of Europe inflamed before us in this great war, there is scarcely a day in which some serious question does not present itself in the maintenance of our public policy, some delicate situation which affects our national honor,—both in our character of neutrals and our relations with the belligerent powers, and in their dealings with us in return.

It may be of interest, therefore, to consider one or two of the underlying principles of the rights and duties of neutral nations; not the less so, perhaps, because of the fact that neutrality, in its present recognized form, is the most recent and most modern of the effective rules of international law.

Indeed, the nations of antiquity had not only no conception of what we call neutrality, but they had not even a name by which to convey our meaning of the term. The Romans alluded to those not engaged in the war as *medii, amici* or *pacati;* and their dealings with them were regulated, as far as we can judge, by the feeling that they were peaceful and friendly; at all events that they were not openly to be regarded as the enemy. And this appears to have been the view of their position throughout the Middle Ages. It

was only in the seventeenth century that the term *neutralis,*—meaning to the minds of the people of that day, *non hostis,*—was brought into general use by the publicists, and that since then the condition of the neutral has been established, somewhat artificially, as is considered by some writers,[1] under the process of which the term *neutral* has been extended to the flag of a nation which chooses to take no part in the war, to its ships, its commerce and its citizens.

From this point of view it has been declared that neutrality is "the continuation of a previously existing state." That is to say: Powers which go to war and become belligerents alter their condition,—whilst those which choose to be neutral remain as they were before. Consequently, in their case, their international rights are unchanged; and "neutral states and their citizens are free to do in time of war between other states what they were free to do in time of peace."[2]

But, under the rules of international law, the state of neutrality carries with it certain rights and obligations which do not exist when there is no war. It has been settled that neutral governments may regulate the furnishing of certain articles to belligerent cruisers that seek hospitality in their ports, though they are bound to prohibit the supply of certain other articles, as, for instance, arms and ammunition. They have the right to enforce the respect for the neutrality of their waters, though they must not allow their territory to be used for fitting out or equipping armed expeditions against any belligerent. So also, the commerce of neutral individuals is subject to certain restrictions, as, in the matter of contraband of war, which do not exist in time of peace.

But the theory of the law is that these are merely the changes in certain details produced by common consent of the nations,—by the condition of war; though the principle remains permanently fixed, that the rights of a neutral continue, uninterrupted, in time of war precisely as in time of peace,—his rights of trade and commerce, his rights of free intercourse with either belligerent, or with anyone else; and that every restriction upon these activities that

[1] Holland, *Fortnightly Review,* July, 1883.

[2] Lawrence, "International Law," par. 243.

are lawful in a state of general peace must be based upon a clear and unquestioned rule of international law; the burden of proof being upon him who seeks to enforce the restraint.

As a general statement, the obligations of all neutral states are the same, so also are their rights, as non-belligerents and non-participants in the war; they decide by their own motion to occupy a neutral position, aside from and between the belligerents, with all of whom they voluntarily remain at peace. This is called "perfect neutrality," and is accepted by all the powers. But there are two classes of neutrals into which the whole body of neutral nations is divided, whose relations to the war are different in this respect: that, one set of them abstain by their own free will from entering the war; whilst the others are restrained from taking part in the hostilities and are obliged to remain out of it by the conditions of their existence. This difference between them marks the difference between neutrality and neutralization; between neutral and neutralized territory. And it is to this latter that I beg leave for a moment to direct attention.

A neutralized state, then, is one which is and must remain neutral under all circumstances. Its independent existence rests upon that condition. It is a state which has been constituted by common consent of the great powers, which has received from the powers the right to subsist, provided that it take no part whatever in any conflict that may arise between its neighbors and shall have no right of its own to take up arms except to repel attack or to defend its territory. Thus a neutralized state is, in fact, allowed to exist because the operative forces of self-interest of its neighbors find sufficient benefit accruing to themselves,—as, for instance, that it forms an intervening space between themselves and their own powerful neighbors whose proximity threatens their peace,—to induce them to agree to its existence. There are neutralized states, under international law, and neutralized individuals; and this character may be extended also to seas and waterways, to buildings, ambulances and ships.

A distinguished authority (Professor Holland) defines the process of neutralization as "the bestowing by convention of a neutral character upon states, persons and things which might otherwise

bear a belligerent character." But, "so great a change in their legal position cannot be made without the consent of all the parties affected by it. It must be made as the result of international agreement, in order to be valid, and must be accepted by all the important states."[3]

Neutralized states, therefore, are those which, whilst remaining politically independent, have yielded up a part of their sovereignty as the price of their existence, and are dependent upon the powers to protect them,—though they do not belong to the councils of the great powers, nor have they the right to discuss questions of policy which may ultimately lead to the employment of force, except in defence of their own frontiers.

The two conspicuous examples of this kind are Switzerland and Belgium. The cases are similar; each forms with its intervening territory a barrier between the threatened conflicts of powerful neighbors. Switzerland, lying as it does, between Germany, Italy and France, is so situated that if the passage through its territory were open, the Austrians might proceed freely from the valley of the Danube to the Rhone and the Po, and menace the western boundary of France throughout its entire length; and, indeed, that is what happened during the French Revolution, when the neutrality of Switzerland was disregarded and her territory invaded by all the contending parties, whilst the French, Austrians and Russians used her soil for their hostilities against each other. Again, in 1813, the Austrian army passed through Switzerland and crossed the Rhine at three places, in its campaign against France.

A short time later, the perpetual neutrality of Switzerland was recognized by the Congress of Vienna, in 1815; but, upon the return of Napoleon from Elba, the Allies called upon the Swiss Confederation to join in the general coalition against France, in order to assist them in promoting the common welfare of Europe and prevent the reestablishment of the revolutionary authority in France. They declared that they knew the importance attached by Switzerland to the maintenance of the principle of her authority, and that they did not intend to violate that principle; but with the view of accelerating the time when it might be made permanent

[3] Lawrence, ubi supra, paragr. 245.

and advantageous, they called upon the Swiss to assume an attitude and to take such measures as might be in proportion to the extraordinary circumstances of the moment, without forming a rule in this respect for the future. That is to say, the allied forces claimed the right to pass through Switzerland, recognizing her neutrality but agreeing that if it were violated by them they should not regard their act as a rule in the future. In truth, her neutrality was violated during the war by the contending parties on both sides.

But, after the reëstablishment of the general peace in Europe, a declaration was finally made, at Paris, in 1815, which fixed the political status of the Swiss Confederation, and upon that foundation it has rested ever since. By that declaration, both France on the one side and the allies on the other, Great Britain, Austria, Prussia and Russia, formally recognized the perpetual neutrality of Switzerland and guaranteed the integrity and inviolability of her territory. They declared also that the neutrality of Switzerland, and her independence of all foreign influence, were conformable to the true interests of the policy of all Europe.

The situation of Belgium renders it in this respect similar geographically to that of Switzerland; for it is the barrier which lies interposed between Holland and Germany on the one side and France on the other, and by means of its territory the boundary lines of these great powers are separated from each other in such a manner as to remove the menace of irritation which is always present in Europe where the common frontier is marked by a single line. With this barrier maintained, also, both France and Germany are protected from immediate attack at several of the most vulnerable points in the territory of each; as has been made evident by the conflicts that have taken place between the rival powers on the continent for hundreds of years, which have made Flanders and the low countries the battleground of Europe.

The territory of the present kingdom of Belgium was incorporated with that of Holland, in 1815, by the Congress of Vienna, in order to form the kingdom of the Netherlands, and for the distinct purpose of placing a barrier between the territories of Germany and France. But, quarrels of a domestic character having

broken out in the low countries, Belgium separated itself from the kingdom of the Netherlands, in 1831, the outcome of which was that a treaty was made, on the 19th of April, 1839, establishing peace between Belgium, as an independent kingdom, and Holland; and, on the same date, in 1839, another treaty was entered into by Great Britain, Austria, France, Prussia and Russia with the king of the Netherlands, recognizing that the union between Holland and Belgium, in virtue of the Treaty of 1815, is dissolved, and that Belgium, which is to be composed of certain provinces specifically delimited and set forth, shall become an independent state.[4]

This, then, is the origin and constitution of the kingdom of Belgium as we know it today. The powers agreed that, within certain boundary lines, it should be allowed to exist as a separate kingdom. They went further than that, and agreed also, by Article VII. of that Treaty, that:

We have in this a well-defined example of neutralized territory, as we are considering it today. Belgium was granted all the privileges of independence, with the right to make her own laws, regulate her own domestic affairs and administer her own government; always provided, however, that she should maintain, in her foreign relations, the strictest neutrality toward all other states. And this, it is believed, she has faithfully performed.

But, it will be observed that, whilst Belgium is thus bound to the great powers as to her neutrality, there is no agreement for specific performance upon their part in this respect, beyond their ratification of the convention itself and their general undertaking to carry out all of its provisions, in which the powers themselves had not entire confidence. It was evidently not regarded by them as a sufficient safeguard in the event of war, for when Germany and France declared war upon each other, in 1870, there was such grave danger that both the independence and the neutrality of Belgium would be disregarded in the course of the conflict, that it was considered necessary to assure her safety by special agreement having regard to the circumstances of that time.

[4] Hertslet, "The Map of Europe by Treaty," II., p. 984.

"Belgium, within the limits specified, shall form an independent and perpetually neutral state. It shall be bound to observe such neutrality towards all other states."

Therefore, Great Britain entered into a separate treaty with Prussia, in August, 1870, by which it was agreed that:[5]

"If during the hostilities the armies of France should violate the neutrality of Belgium, Great Britain would be prepared to coöperate with Prussia for the defence of the same in such manner as may be mutually agreed upon, employing for that purpose her naval and military forces to insure its observance, and to maintain, in conjunction with Prussia, the independence and neutrality of Belgium."

And Great Britain entered into a separate treaty with France, at the same time, making provision in the same terms for the coöperation with her for the defence of Belgium in case that Belgian territory should be invaded by the armies of Prussia. These separate treaties were made binding in each case upon the parties during the continuance of the War of 1870, and for twelve months after the ratification of the treaty of peace. Thus Belgium was protected against invasion or disturbance during the Franco-Prussian War; though since that time both her independence and her neutrality depend upon the old agreement between the five powers, made in 1839.

But, as an old French writer has well said: "With such neighbors there is always a chance for trouble." The unfortunate situation of Belgium leaves her always open to danger when her powerful neighbors begin to fight over her head. She has her defence in the old agreement of the powers, it is true. But will that be a sufficient defence when either or all of the powers, engaged in a desperate conflict amongst themselves, find that their own self-interest, then of prime importance to each of them, places the consideration of Belgium in the background? Evidently not; and in this respect all the powers appear to be alike.

For instance, Sir Edward Grey in his great speech in Parliament, on the 3d of August, 1914, whilst advocating the neutrality of Belgium in the present war, pointed to the *interests* of Great Britain as the determining factor in the observance of the guarantee entered into by the powers, in 1839.[6] He quoted to the House the speech which Mr. Gladstone had made in Parliament, upon the same subject, in 1870, when he said, in regard to Belgian neutrality:

[5] Hertslet, "Map of Europe," III., p. 1886.

[6] *The Times,* London, August 4, 1914.

"There is, I admit, an obligation of the treaty. It is not necessary, nor would time permit me to enter into the complicated question of the nature of the obligation under that treaty. But I am not able to subscribe to the doctrine of those who have held in this House what plainly amounts to the assertion that the simple fact of the existence of a guarantee is binding on every party to-day irrespectively altogether of the particular position in which it may find itself at the time when the occasion for acting on the guarantee arises. The great authorities upon foreign policy to whom I have been accustomed to listen, such as Lord Aberdeen and Lord Palmerston, never to my knowledge took that rigid, and if I may venture to say so, that impracticable view of the guarantee. The circumstance that there is already an existing guarantee in force is, of necessity, an important fact, and a weighty element in the case to which we are bound to give full and ample consideration."

Sir Edward Grey added to this his own statement, that:

"The treaty is an old treaty—1839. It is one of those treaties which are founded not only on consideration for Belgium which benefits under the treaty, but in the interests of those who guarantee the neutrality of Belgium."

Unfortunately this is true. That treaty is evidently an obligation of convenience. Germany, upon her side, took the same view. The German Chancellor in his speech before the German Parliament alluded in this connection to "the wrong which we were doing in marching through Belgium." The German government declared that "it had in view no act of hostility against Belgium." It expected the Belgians to maintain an attitude of friendly neutrality toward Germany,—in return for which it undertook, at the conclusion of peace, to guarantee the independence of the Belgian kingdom in full. The Chancellor hoped that the Belgian authorities would yield to the inevitable and "retire to Antwerp under protest."

I do not intend to pursue this inquiry in the direction in which it has given rise to the controversy on both sides, and possibly the world over, as to whether the Allies were ready to pass through Belgium if the Germans had not done so. We are concerned merely with the law. Of course, if Belgium had taken the slightest step toward uniting her forces with either of the belligerents as against the others, she would have forfeited her attitude of neutrality and become herself a belligerent, subject to be treated as an enemy. And this would be the end of her independent existence; for that is based upon the neutrality which the convenience of the great powers has determined upon as the condition precedent of her national life.

But, assuming that she committed no breach of neutrality,—what rights has Belgium or Switzerland or any other neutralized territory? It has the right to defend itself, as Belgium has done. She is not obliged to defend herself, but may choose whether she will do so or not. For, if she yield to superior force, that can not be looked upon as an un-neutral act; though it may place her during the war upon the side of one of the belligerents, as is the case of Belgium today in consequence of her defence. Still, Belgium had undoubtedly the right to defend her soil. The law is on her side in that regard.

But, on the other hand, what protection has she? Evidently nothing but the agreement under which she lives,—and that depends either upon the "interests" of the powers who made the agreement, as Sir Edward Grey said, or upon the convenience of respecting it, as the advance of the German army has proved.

In the heat of a savage conflict, the reasons for the agreement are destroyed and the agreement itself is torn to shreds; for there is no one to enforce it. The only force that exists is being exhausted in the war. The neutralized territory has rights that are not only recognized but also defined by international law. It has its guarantees as well,—equally recognized and defined, though, as in the present case, the authority of the law is gone, and how shall a method be found by which to guarantee the guarantees?

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